

**CALIFORNIA BOARD OF ACCOUNTANCY**

2000 EVERGREEN STREET, SUITE 250  
SACRAMENTO, CA 95815-3832  
TELEPHONE: (916) 263-3680  
FACSIMILE: (916) 263-3675  
WEB ADDRESS: <http://www.dca.ca.gov/cba>



## **Mediation Guidelines**

(Adopted by the California Board of Accountancy July 17, 1998)

### **PREAMBLE**

The California Board of Accountancy, through its Enforcement Division, investigates matters involving the conduct of Certified Public Accountants and Public Accountants in connection with alleged violations of the California Accountancy Act. It is the Board's objective, in carrying out its mission of public protection, to continuously improve the enforcement process to ensure prompt investigation and appropriate resolution of these matters.

The Board has embraced and employed alternative dispute resolution as one means of resolving its enforcement cases when appropriate. The Board has determined that alternative dispute resolution in the form of mediation is an additional effective tool in the enforcement process. The Board strongly endorses the use of mediation when appropriate in the enforcement process.

Mediation proceedings could result in a variety of outcomes or recommendations, including case closure; narrowing of issues through stipulation of facts; termination of the mediation without agreement; or proposed stipulated settlement. Mediation will not result in a report of findings from the mediator.

Further, mediation will not result in the imposition by the mediator of binding resolution on the parties. Stipulated settlements, and the pleadings upon which they are based, are public documents on file with the Board as provided by law.

Care is necessary in the use of mediation to avoid the perception that Board staff or counsel may be attempting to force a particular outcome or result. Similarly, the perception of favoritism or of the exclusively private settlement of public issues must be avoided. Educational materials outlining the Board's processes will be augmented to provide information on the mediation process. These materials are routinely provided to licensees at various stages of an investigation.

## **MEDIATION**

Mediation is a voluntary process whereby the Board and a licensee of the Board can attempt to resolve a dispute with the assistance of a neutral facilitator. This process is available to the Executive Officer to expedite the resolution of enforcement cases and consistent with the public interest, will be used in his or her sound discretion.

## **USE OF MEDIATION**

Mediation may be utilized in situations where it would appear the issues in an enforcement matter could be resolved quickly, efficiently, and/or less expensively by the use of mediation. The decision to employ mediation, the timing of its initiation, and determination to discontinue mediation are in the sound discretion of the Executive Officer.

Mediation is generally not appropriate prior to a pre-filing conference. The Executive Officer shall consult with legal counsel in evaluating whether to exercise his or her discretion to use mediation in a particular case. Mediation is not appropriate if its use would jeopardize the public interest or only serve to delay the matter.

## **INITIATION OF MEDIATION**

The request for mediation should generally come from the licensee, particularly if a pleading is not on file; however, mediation is not a right of the licensee. Mediation will be employed only in the sound discretion of the Executive Officer, and the Executive Officer shall determine the appropriate point in the enforcement process to employ mediation.

## **QUALIFICATIONS AND SELECTION OF MEDIATOR**

The parties shall agree upon the choice of the mediator. The mediator shall adhere to the accepted standards of integrity, impartiality, and professional competence required of mediators.

The Office of Administrative Hearings (OAH) is the only agency through which the Board may contract with a mediator. OAH has a panel of administrative law judges and pro tem judges trained and available as mediators. Unless otherwise agreed by the parties, OAH will provide, upon request, a list of qualified mediators and their respective experience and qualifications. If the parties mutually agree upon a mediator from a source other than the OAH list, a copy of the resume of the agreed-upon mediator shall be forwarded to OAH for its consideration as an addition to the pool of OAH mediators.

The most critical desired skill is that of a proven facilitator. Although OAH has mediators available and experienced in complex business issues, such experience is not necessarily required for successful mediation.

### **COST OF MEDIATION**

Compensation of the mediator and any other associated costs shall be shared equally by the licensee(s) and the Board; however, the Board may assume a proportionately larger responsibility for the costs of mediation when the Executive Officer determines that mediation is in the best interest of the parties and the licensee demonstrates, to the Executive Officer's satisfaction, financial hardship and an inability to share in or contribute to the costs. An agreement regarding compensation and costs shall be reached between the mediator, the licensee(s), and the Executive Officer or Board designee prior to the commencement of mediation and shall be memorialized in writing.

### **DATE, TIME, AND PLACE OF MEDIATION**

In consultation with the licensee(s) and the Executive Officer, the mediator shall fix the date, time, and place of each mediation session. The mediation shall be held at any convenient location agreeable to the parties and the mediator. Statutory, regulatory, and other timelines related to the dispute itself will not be affected unless by stipulation of the parties. In the event the matter is an adjudicative proceeding subject to the provisions of the Administrative Procedure Act, any agreements affecting timelines are subject to review and approval of the Office of Administrative Hearings or the Administrative Law Judge assigned the case.

### **ATTENDANCE AT MEDIATION**

All involved parties shall attend the mediation session(s), which shall be non-public. A party other than a natural person (e.g., a corporate or governmental entity or association) satisfies this attendance requirement by designating and sending a representative familiar with the facts of the case, who can effectively represent the licensee(s), negotiate and exercise decision-making authority on their behalf, and bind them to an outcome to be proposed to the Board for its consideration.

The Board shall be represented by the Executive Officer or Board designee who has the authority to negotiate a stipulated settlement consistent with the Board's Disciplinary Guidelines. The Executive Officer or Board designee shall be empowered to effectively recommend settlement of the matter to the Board, consistent with the provisions of Government Code Section 11415.60.

Any party to the mediation may have the assistance of an attorney or other representative at the cost of that party. Other persons may attend only with the

permission of the licensee(s) and the Executive Officer or Board designee and with the consent of the mediator.

### **MEDIATION STATEMENTS**

The mediator will determine the manner in which the issues in dispute shall be framed and addressed. The licensee(s) and the Board Executive Officer or Board designee should expect that the mediator will request a pre-mediation statement outlining facts, issues, and perspectives in advance of the mediation session. At a time established by the mediator, such statements shall be exchanged by the licensee and the Executive Officer or Board designee unless they agree otherwise. Likewise, other information may be exchanged upon the agreement of the parties.

### **AUTHORITY OF MEDIATOR**

The mediator is authorized to conduct joint and separate meetings with the licensee(s) and the Executive Officer or Board designee and to make oral recommendations for resolution. The mediator does not have the authority to impose any orders or resolutions on the parties. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the licensee(s) and the Executive Officer or Board designee agree and assume the expense of obtaining such advice.

### **AGREEMENTS**

Mediators shall not issue a report of findings. If mediation concludes with a written proposed stipulated settlement signed by the parties, the Board shall review and either approve or disapprove the proposed settlement. In accordance with Government Code Section 11415.60(b), a settlement may not be made before issuance of the agency pleading. The Board's decision approving a settlement, and the settlement, shall be publicly filed. Any proposed stipulated settlement resulting from a mediation proceeding shall be binding upon the licensee(s) thereto; and the Executive Officer or Board designee shall be bound to present the proposal to the Board unless a material change in facts or law unknown to the Executive Officer or Board designee at the time of the agreement subsequently becomes known prior to Board action on the proposal.

### **TERMINATION OF MEDIATION**

Mediation is an entirely voluntary process. The Executive Officer, the licensee(s), or the mediator may terminate the mediation process at any time. The Executive Officer shall continually evaluate the decision to use mediation as it relates to consistency with the public interest.

If the Executive Officer, the licensee(s), or the mediator terminates the mediation, or if mediation ends without a resolution of the matter, the parties shall proceed as if mediation had not taken place.

### **CONFIDENTIALITY**

Confidentiality shall be governed by Government Code Section 11420.30, and Evidence Code Sections 703.5 and 1126.

Mediation shall be confidential. The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the mediation or compelled by law, except that the fact that a mediation has occurred shall not be considered confidential.

Notwithstanding the foregoing, the parties agree and acknowledge that the provisions of this paragraph shall not operate to shield from disclosure to the Board or any other regulatory authority, documentary or other information that the Board or other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities.

The requirements that Board pleadings and decisions, including stipulated settlements related thereto, be publicly filed with the Board are not affected by this provision.